

Union Representation in Disciplinary and Investigatory Meetings with Administrators

“If this discussion could lead to my being disciplined or terminated, I request that my union representative be present at the meeting.”

A union rep’s assistance is helpful in many situations, but in disciplinary matters, union representation can be crucial.

In what situations should a union rep be present?

- When the principal (or another supervisor) calls the meeting;
- When the member’s attendance is mandatory;
- When the member reasonably believes discipline could result; and
- When the member requests representation.

In what situations does this NOT apply?

- Where the meeting or discussion is merely to convey work instructions, training, or needed corrections;
- Where the meeting is simply to inform the member about a disciplinary decision that has already been made and no information is sought from the member;
- Where the principal has assured the member before the interview that no discipline or will result from the interview; or
- Where the member—not the principal—initiates a discussion after the principal has already notified the member of the discipline.

What constitutes a “reasonable expectation” that discipline may result?

The test is objective, not subjective. The member’s belief must be a reasonable assessment of the factual circumstances. That is, would another person standing in the shoes of the member have a reasonable fear that discipline would result? For example, has the principal provided any oral or written warnings? Have there been oral or written allegations of misconduct? Has the member been under scrutiny previously? Have other educators been disciplined for similar conduct?

Routine supervision and evaluation are not disciplinary, nor is issuing a warning or a Summary of Conference. (It just feels that way!)

What if the principal says a disciplinary decision has already been made but then questions the member about the conduct?

The member can ask for representation at any point when the principal asks the member questions. Seeking such information could indicate that the principal is trying to support or possibly alter the disciplinary decision. If this happens, the member should ask for a union rep.

Must the principal advise the member to contact a union rep before conducting the meeting or interview?

No. It is *up to the member to ask for representation*. However, in MCPS, there is a past practice of some principals advising members they have a right to union representation in pre-disciplinary meetings with HR. (Some principals don't mention union representation until they have already decided on a disciplinary action. (That's too late!))

How and when should a member request representation?

When asked to meet with the principal, the member should always ask about the meeting's purpose. As soon as the member becomes aware that the principal wants to meet to obtain information that the member reasonably believes may result in discipline or support a disciplinary decision already made, the member should state the desire for representation.

The employee's request does not have to be in any particular form, nor does it have to be in writing. Even words such as, "I'd like a representative here," are sufficient. The member can make that request at any time before the meeting and even in the middle of the meeting.

Does the member need to repeat the request for representation more than once?

No. The principal must respect the request even if it is made to a lower-level supervisor who is not conducting the meeting.

What should members do if they are unsure whether to ask for a union rep?

It is always prudent to ask for representation even when you are not sure you are entitled to it. *The principal cannot discipline you merely for asking*. Members should ask whether or not the meeting could result in disciplinary action. If the answer is anything but "no," the member would be reasonable in requesting representation.

What is the representative's role, rights, and duties at the meeting?

- To be informed about the subject matter of the meeting;
- To consult privately with the member before the meeting;
- To speak and be proactive during the interview, including clarifying questions and answers, so long as doing so does not interfere with or disrupt the meeting;
- To counsel the member;
- To caucus as needed with the member;
- To provide additional information to the principal at the end of questioning; and
- To be a witness to the proceedings, take notes, etc.

Can the member insist on a particular representative?

The member may choose the representative without the principal's interference, as long as it doesn't unduly disrupt the principal's ability to conduct the investigation. The principal should try to comply with an employee's request, even if it means some delay in scheduling the meeting. However, the member cannot expect the principal to postpone the meeting unreasonably. Both parties' reasonableness is considered on a case-by-case basis.

If a principal agrees to union representation, may the member refuse to answer questions?

No. Generally, a member does not have the right to remain silent, as long as the administrator has honored the union representation request. Furthermore, the union representative cannot direct the member to remain silent. However, there is one exception: when the matter under discussion has potential criminal implications.

What happens if there are potential criminal implications?

The member should invoke the Constitutional right against self-incrimination and refuse to answer any questions. However, if the principal directs the member to answer the questions or face dismissal, the member should insist on his or her Garrity rights. If they are not given, the member should invoke his or her Garrity rights and have the rep contact the MCEA UniServ Director immediately.

What are *Garrity* Rights?

Under Garrity, public employees have the right to be free of any compulsion to incriminate themselves (in criminal matters) to a government employer. The principal must affirm that the questioning is for administrative purposes only and not for prosecution and that failure to answer will result in termination. In other words, the member can't be forced to choose between self-incrimination and job forfeiture.

Can a member waive union representation?

Yes. If a member neglects to ask for representation, she or he will have "waived" the right. Remember, the request for representation does not have to comprise any "magic words" if it puts the principal on notice that the member would prefer representation. If the principal claims that the member chose to continue the interview without representation, the principal must demonstrate that the choice was voluntary and unmistakable. For example, if the member elected to go forward without a representative only after the principal said, "Things will be worse for you if you insist on having the union present," then the choice is not voluntary.

Any further thoughts?

Many members come to MCEA after the investigatory interview. Some didn't know they had a right to a rep. Others felt embarrassed or were afraid their building rep would gossip about them. Assure members in advance you are there to help and that you will respect their confidence. Everyone has rights, and we are stronger together.

